

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 23 August 2006

Case No. 2006-LHC-97
OWCP No. 10-039871

In the Matter of
R. K.

Claimant

v.

JEFFBOAT/ACMS
Employer
and
JEFFBOAT, INC.
Carrier

and

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS
Party-in-Interest

APPEARANCES:

Melissa Olsen, Esq.
Groton, Connecticut
For the Claimant

Laurie Kemp, Esq.
Louisville, Kentucky
For the Employer

BEFORE: RUDOLF F. JANSEN
Administrative Law Judge

DECISION AND ORDER – GRANTING BENEFITS

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. § 901, et seq., and implementing regulations found at 20 CFR Part 702, brought by Claimant, R.K. against his former employer, Jeffboat/ACMS, and its insurance carrier, Jeffboat, Inc. The Act provides for payment of medical expenses and compensation for disability or death of maritime employees other than seamen injured on navigable waters of the

United States or adjoining areas. Claimant alleges that he was exposed to asbestos-related materials while employed with Jeffboat which resulted in his disability.

R.K., represented by counsel, appeared and testified at the formal hearing held March 23, 2006 in Louisville, Kentucky. I afforded both parties the opportunity to offer testimony, question witnesses and introduce evidence. At the hearing, Claimant's Exhibits ("CX") 1 through 13 and Employer's Exhibit ("EX") 1 were admitted into evidence without objection. (Transcript ("Tr.") at 7-11). Joint Exhibits are referred to as ("JX") and Exhibits of the Administrative Law Judge are referred to as ("ALJX"). After the hearing, the record was held open to allow the parties an opportunity to submit their joint stipulations and post-hearing briefs, and thereafter, I closed the record. I based the following findings of fact and conclusions of law upon my analysis of the entire record, arguments of the parties, and applicable regulations, statutes, and case law. Although perhaps not specifically mentioned in this decision, each exhibit and argument of the parties has been carefully reviewed and thoughtfully considered. Although the contents of certain medical evidence may appear inconsistent with the conclusions reached herein, the appraisal of such evidence has been conducted in conformity with the quality standards of the regulations

STATEMENT OF THE CASE

Background

R.K. ("Claimant") worked at Jeffboat between 1964 and 1998. He worked as a laborer, painter, sandblaster, welder, machine operator and foreman for the company. Claimant alleges that he was exposed to asbestos and other harmful fumes and irritants during his employment and as a result, he has contracted a respiratory condition resulting in his permanent total disability. Claimant filed his claim under the Longshore and Harbor workers' Compensation Act on August 10, 2001. Claimant then requested a formal hearing and the claim was transferred to the Office of Administrative Law Judges.

Issues¹

The issues before me are:

1. Whether Claimant's injury arose out of and in the course of Claimant's employment with Employer;
2. Whether Claimant is entitled to medical care and treatment pursuant to Section 7; and
3. Whether Claimant is entitled to attorney fees and expenses pursuant to Section 28.

¹ At the hearing the parties stipulated to timeliness, notice and permanent total disability. (Tr. 13-15).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Stipulations

The parties were able to reach the following Stipulations:

1. The parties are subject to the jurisdiction of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901 et seq.
2. Claimant and Employer were in an employer-employee relationship at the time of the accident/injury.
3. The accident/injury occurred on September 20, 1998, Claimant's last day of employment.
4. The Claimant filed a claim for compensation on August 10, 2001.
5. Any occupational disease was manifest to the Employer on August 10, 2001.
6. Employer filed a first Report of Injury (Form LS-202) with the Secretary of Labor on August 31, 2001.
7. Claimant filed a timely notice of claim.
8. The Employer filed a timely notice of controversion on August 31, 2001.
9. Disability payments have not been made.
10. Claimant's "usual employment" consisting of his regular duties at the time of the injury as determined under Section 8(h) of the Act were as follows:
 - a. Shipyard worker which included welding, sandblasting and painting.
11. Claimant has not returned to his usual employment with the Employer since the date of his injury.
12. Claimant's average weekly wage at the time of the accident/injury was \$871.22, and his compensation rate was \$580.82.
13. For a one-year period immediately prior to the accident/injury, Claimant was a five-day-per week worker.
14. The date of maximum medical improvement from Claimant's work-related injury was September 20, 1998, his last day of work.
15. Claimant suffers from a permanent total disability.

(JX 1; Tr. 14-15).

These stipulations have been admitted into evidence and are therefore binding upon the Claimant and Employer. See 20 CFR § 18.51; *Warren v. National Steel & Shipbuilding Co.*, 21 BRBS 149, 151-52 (1988). Although coverage under the Act cannot be conferred by stipulation, *Littrell v. Oregon Shipbuilding Co.*, 17 BRBS 84, 88 (1985), I find that such coverage is present here. I have carefully reviewed the foregoing stipulations and find they are reasonable in light of the evidence in the record. As such, they are hereby accepted as findings of fact and conclusions of law. The administrative law judge has discretion to decline or accept all of the parties' stipulations into evidence. *Warren*, 21 BRBS at 151. However, stipulations regarding an incorrect application of law are not binding. *Duncan v. Washington Metropolitan Area Transit Auth.*, 24 BRBS 133, 135 n.2 (1990).

Summary of the Evidence

A. Claimant's Testimony

Claimant was born March 5, 1942, and is married to his wife K.K. (Tr. 19). The couple have four children. (Tr. 20). Claimant has an eighth grade education. (Tr. 20). He never obtained his G.E.D. (Tr. 21). Claimant testified that he started smoking between the ages of twenty-three and twenty-four. (Tr. 21, 59). He averaged a pack of cigarettes per day. (Tr. 22). He testified that some days he would smoke less than a pack and others he would smoke more than a pack. (Tr. 60). However, he quit smoking around 2003. (Tr. 21, 60). Based on all the evidence of record, I find that Claimant has a thirty-eight pack year smoking history.

On October 14, 1964, Claimant went to work for Jeffboat Shipyard in Jeffersonville, Indiana. (Tr. 22). Jeffboat is located on the Ohio River. (Tr. 22). Claimant left Jeffboat in 1998 and has had no further employment. (Tr. 25). He worked for Jeffboat around thirty-five years. (Tr. 62). At Jeffboat, Claimant first worked as a general laborer cleaning barges, towboats and the yard. (Tr. 26). Claimant worked on both older barges and those under new construction. (Tr. 26). He was responsible for sweeping dust, welding rods and other material out of the barges. (Tr. 27). At times he worked in very confined spaces with only crawl space. (Tr. 27). As Claimant swept the debris he would breathe in the dust it created. (Tr. 28, 29).

Next, Claimant worked as a spray painter for around fifteen years. (Tr. 29, 65). He was responsible for painting barges and tow boats. Again he often worked in very confined spaces. (Tr. 29). The only ventilation was the hole he crawled down through. (Tr. 38). As a painter he continued to clean up dust and debris. (Tr. 29). At times the dust was so thick that he could not see. (Tr. 30). Claimant used an airless spray gun when painting. (Tr. 37). The gun produced a lot of fumes. (Tr. 38). Claimant wore an air mask but it merely consisted of a brown paper bag tied around his head. (Tr. 38). He testified that the mask was "the main source of living or dying." (Tr. 38). However, after painting he would blow his nose for a week and spit up phlegm. (Tr. 38). Jeffboat did not provide the painters with a fan or any other kind of ventilation devise. (Tr. 39). Also during this time, Claimant performed a lot of the work in the engine rooms where other welders, laborers and spray painters were working. (Tr. 31). The materials the welders used produced fumes that Claimant inhaled. (Tr. 31). The carpenters also

installed asbestos insulation around where Claimant was working. (Tr. 32, 33). The carpenters cut the insulation with a carpet knife which produced a little dust. (Tr. 33).

Claimant then worked as a welder. (Tr. 39). He used a welding machine and welding rods. (Tr. 39). After the rods burned down the welders would throw the rods on the floor where they were working. (Tr. 39). They walked over the used rods. (Tr. 39). The rods crumbled up and produced dust which Claimant had to sweep up. (Tr. 40). Claimant inhaled the dust from the rods. (Tr. 40). He welded mild steel and iron. (Tr. 40). At times the metal was coated with coal tar. (Tr. 41). While welding Claimant inhaled the smoke and fumes it produced. (Tr. 41, 50). He testified that even the box that the welding rods came in warned not to breathe the fumes. (Tr. 50). (Tr. 42). A lot of welders worked in the same area around Claimant. (Tr. 42). He also inhaled the fumes they produced. (Tr. 42, 51). At times the air was so filled with dust and fumes that it was hard to see through it and the cranes working overhead had to stop because the operators could not even see the floor for all the dust and fumes. (Tr. 42). No matter what job he performed at Jeffboat, he was always in contact with the fumes from welders. (Tr. 51).

Claimant also worked as a sandblaster for around six or seven years. (Tr. 43, 46). He was responsible for blasting the "mill scale off of new metal" so that it could be primed and painted. (Tr. 43). Silica and a substance called black beauty were used in the sandblasters. (Tr. 43). The substances were shot out of a high pressure hose onto the metal. (Tr. 43). They would produce so much dust that Claimant could not see the sandblaster. (Tr. 44). Claimant inhaled this dust. (Tr. 44). The dust and sand would get so deep that a back hoe had to be used to shovel it out. (Tr. 44). Next the painters would come in and paint the area and then Claimant had to blow off all the debris from the area. (Tr. 45). This also produced a lot of dust which Claimant inhaled. (Tr. 45). Claimant then worked as a machine operator at Jeffboat. (Tr. 46, 66). He worked beside employees called "burners" who were responsible for burning steel. (Tr. 46). The burners would place the steel into a large burning machine which produced "bad fumes." (Tr. 47-48). Also "real fine fibers of steel" would blow in the air which Claimant inhaled. (Tr. 49). Last, he worked as a foreman eight years.

Claimant testified that Jeffboat's employees, including himself, ate lunch in a building that was built in the 1940's containing asbestos materials in the walls. (Tr. 34). The building was in poor condition. (Tr. 35). There were holes in the walls and the sheeting produced dust. (Tr. 35). Claimant stated that when he leaned his chair against the wall of the lunch room dust would fall on him. (Tr. 36). On cross-examination Claimant agreed that he had no personal knowledge as to whether asbestos was used in the building. (Tr. 59). He was only told that asbestos was used. (Tr. 34).

Claimant last worked for Jeffboat in June 1998. (Tr. 53). His boss ordered him to have a breathing test which he failed. (Tr. 53). Jeffboat administered the test. (Tr. 53). The test results revealed Claimant's breathing troubles. (Tr. 53-54). As a result, Jeffboat no longer allowed Claimant to work for them. (Tr. 54). He was required to go on medical leave. (Tr. 58). Claimant later retired in 1999. (Tr. 58). He never received workers compensation benefits but he receives long-term disability benefits from Jeffboat, a retirement pension and social security. (Tr. 54, 58-59).

Since leaving Jeffboat, Claimant's breathing condition has worsened. (Tr. 57). Claimant receives oxygen twenty-four hours a day. (Tr. 54). Dr. Salcedo monitors Claimant's oxygen levels. (Tr. 55). He also uses Albuterol and Combivent. (Tr. 56). Claimant stated that while he was testifying he felt lightheaded due to his breathing condition. (Tr. 56). Claimant is unable to help around the house due to his breathing condition. (Tr. 57). He is unable to mow the lawn or even go fishing. (Tr. 56-57). He testified that his condition continues to get worse and he believes that he could not return to his past work at Jeffboat. (Tr. 57).

Claimant submitted a report from Dr. Arthur DeGraff. (CX 1). Claimant testified that he was never examined by Dr. DeGraff. (Tr. 60). He also stated that he went to see Dr. Kraman at the request of Jeffboat. (Tr. 60). Claimant agreed that none of his treating physicians have ever informed him that his breathing problems are related to his employment at Jeffboat. (Tr. 60-61).

An administrative law judge is entitled to evaluate the credibility of all witnesses and to draw his own inferences and conclusions from the evidence. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2nd Cir. 1961). I find Claimant's testimony credible and give it great weight in making my decision.

B. X-rays/CT scans

Exhibit	Date of testing	Physician/Qualifications	Interpretation
CX 6	Chest x-ray 9/23/98	Paul Tittle, M.D.	Scattered areas of parenchymal fibrosis. Increased density in the periphery of the right lower lobe causing partial obstruction of the right hemidiaphragm.
CX 7	CT scan 9/25/98	Paul Tittle, M.D.	Bilateral upper lobe emphysematous bullae, diffuse pulmonary interstitial fibrosis, basilar parenchymal scarring, granulomatous disease and chronic obstructive pulmonary disease.
CX 3	Chest x-ray 03/06/01	Susan Daum, M.D. B-reader and Board-certified in Internal Medicine and Preventative Medicine.	1/1; Fibrotic pleural streak from diaphragm in right base and hyperlucent in lower lung zones.
CX 8	Chest x-ray 03/06/01	Paul Tittle, M.D.	Mild right basilar fibrosis unchanged from prior exam. No evidence of acute pulmonary disease. Clear pleural spaces.
CX 9	Chest x-ray 05/29/03	Karen Berg, M.D.	Mild atherosclerotic disease, suspected chronic obstructive pulmonary, and granulomatous disease

C. Pulmonary Function Studies

Exhibit/ Date of exam	Physician	Age/ Height	FEV ₁	FVC	FEV ₁ / FVC	Tracings	Comments
CX 5 12/28/04	Stevens	62/ 72"	*1.37 **1.44	*3.20 **3.16	*43 **45	Yes	* Pre- bronchodilator ** Post- bronchodilator Diagnosed severe obstructive defect without significant improvement after bronchodilator. Also noted a moderate decrease in diffusion
EX 1B and 1C 9/01/05	Kraman	63/ 72"	*1.39 **1.32	*3.16 **3.10	*44 **42	Yes	* Pre- bronchodilator **Post- bronchodilator Diagnosed severe airflow obstruction without a significant change in airflow after bronchodilator. Significant air trapping without hyperinflation.

D. Narrative Medical Evidence

On March 29, 2004, Arthur C. DeGraff, Jr., M.D., Board-certified in Internal Medicine and Pulmonary diseases provided a consultative report of Claimant's medical condition. (CX 1, 2). Dr. DeGraff examined Claimant's medical records, chest x-rays and pulmonary function

testing. Dr. DeGraff noted that Claimant worked for Jeffboat as a welder, sandblaster, painter and machine operator between 1964 and 1998. He stated that while employed with Jeffboat Claimant was exposed to asbestos and other harmful lung irritants. Claimant worked around the removal of asbestos and the use of asbestos products. As a result, Claimant inhaled the asbestos fibers that were released into the air. Also as a sandblaster and painter Claimant was exposed to and inhaled sand and silica. (CX 1).

Upon review of the December 8, 2004 pulmonary function testing, Dr. DeGraff diagnosed Claimant with “the presence of severe obstructive ventilatory insufficiency and severe loss of diffusing capacity without significant increased total lung capacity.” (CX 1). Next, Dr. DeGraff reviewed the chest x-ray and CT scan interpretations revealing “mild right basilar fibrosis,” ‘bilateral upper lobe emphysematous bulli and diffuse pulmonary interstitial fibrosis,’ and ‘changes of granulomatous disease and chronic obstructive pulmonary disease.’ Dr. DeGraff then interpreted the March 2, 2001 and May 29, 2003 chest x-rays and found that they both exhibited “diffuse bilateral interstitial pulmonary fibrosis.” (CX 1). As a result, Dr. DeGraff diagnosed Claimant with diffuse pulmonary fibrosis. He opined that Claimant suffers from an obstructive ventilatory insufficiency due to his pulmonary fibrosis which has resulted in pericatricial emphysema and small airway obstruction. (CX 1). Dr. DeGraff stated that Claimant’s exposure to silica and asbestos dust could have lead to his pulmonary fibrosis. However, he was unable to determine which exposure actually contributed to the condition. Dr. DeGraff stated that he “suspect[s] that both dusts had an effect in causing [Claimant’s] pulmonary fibrosis. He found that Claimant is eighty percent impaired based on this condition and should not return to work at Jeffboat. (CX 1).

On February 28, 2006, the parties took Dr. DeGraff’s deposition. (CX 12). He reiterated the findings in his previous report and continued to find Claimant totally disabled due to a work related respiratory condition. Dr. DeGraff testified that over the course of his career he has treated many individuals suffering from occupational lung diseases including asbestosis. He has also examined welders, painters and sandblasters with respiratory conditions who have worked in shipyards. (CX 12).

Dr. DeGraff first discussed the effects of inhaling asbestos, fumes and dust, and how to diagnose related respiratory conditions. (CX 12). He agreed that when fumes and chemicals are concentrated in a small area their toxicity increases. He stated that when “an asbestos particle enters into the lung it now enters . . . with a much higher concentration of the pyrolysis product than would otherwise be the case. And this is a particular problem with development of lung cancer and probably a problem in development of the pulmonary fibrosis.” (CX 12, p. 12-13). However, he noted that asbestos particles alone cause inflammation and scar tissue leading to pulmonary fibrosis. These particles can remain in a person’s lung for many years and a body’s defensive mechanisms are not sufficient to fight the affects. To fully diagnose an asbestos related condition, one must examine the person’s exposure history, chest x-rays, CT scans and pulmonary function testing. The person’s lung volume and diffusing capacity will be reduced. Exposure to fumes, smoke and dust can have similar affects on a person’s lungs, depending on the extent of the inhalation. They cause irritation to a person’s airways and “the damage can occur all the way down into the smallest airspaces, the alveoli or it can be in large airways.” As a result, a person can develop bronchitis, inflammation, pulmonary fibrosis and airway

obstruction. The same occurs when silica from a sandblasting machine or black beauty enters a person's lungs. Pulmonary fibrosis, airway obstruction and impaired diffusing capacity can all occur. (CX 12).

To formulate his opinion on Claimant's condition, Dr. DeGraff examined Claimant's chest x-ray films, the readings of the other physicians, CT scan, pulmonary function testing and the report of Dr. Kraman. (CX 12). Dr. DeGraff assumed that Claimant worked in confined spaces for Jeffboat between 1964 and 1999 as a welder, sandblaster, painter and machine operator. He also assumed that Claimant worked around and inhaled smoke, fumes, silica dust and asbestos particles. Based on the December 8, 2004 pulmonary function testing Dr. DeGraff opined that Claimant "has obstructive lung disease and he has impaired diffusing capacity, and a degree of loss of lung function is such that it could cause limitation in his exercise capacity and his ability to work." (CX 12, p. 27). He found this diagnosis consistent with the inhalation of asbestos, silica, welding fumes and smoke. Also Dr. DeGraff found diffuse bilateral interstitial pulmonary fibrosis based on his own interpretations of the chest films. His findings were confirmed by the September 25, 1998 CT scan of Claimant's chest, "which demonstrated extensive bilateral diffuse interstitial pulmonary fibrosis with pericatricial emphysema." (CX 12, p. 29). Dr. DeGraff explained that pericatricial emphysema is caused by lung retraction secondary to pulmonary fibrosis. Holes develop in the lung tissue due to the scarred tissue. This is different from ordinary emphysema which occurs in the absence of scar tissue. He also stated that Claimant did not suffer from emphysema caused by smoking because his diaphragms were not flattened, which is typical of smoking induced emphysema. Also the fact that Claimant's disease is diffuse illustrates an asbestos or silicosis related condition. Therefore, Dr. DeGraff opined that Claimant's respiratory condition was directly related to his work at Jeffboat. He stated that Claimant suffers from a Class IV impairment of eighty percent based on the pulmonary function testing and the American Medical Association guidelines. Dr. DeGraff testified that Claimant is unable to return to work in a shipyard. (CX 12).

On cross-examination, Dr. DeGraff agreed that he has neither spoken with Claimant directly nor examined him. (CX 12.). He only relied upon the information provided by Claimant's counsel. He was unaware of Claimant's family history and past lung surgery. However, Dr. DeGraff stated that despite Dr. Kraman's findings, he continues to find that Claimant suffers from pulmonary fibrosis. He couldn't understand how Dr. Kraman failed to find pulmonary fibrosis on the CT scan. Dr. DeGraff testified that while it is advantageous to question a patient, it is no more advantageous to examine him than it is to review his medical records in a case like this. Dr. DeGraff stated that even if he had examined Claimant his opinions would have remained the same. (CX 12).

Steven Kraman, M.D., Board-certified in Internal Medicine and Pulmonary Diseases, examined Claimant on September 8, 2005. (EX 1A, 1B). He recorded an employment history with Jeffboat between 1964 and 1998 as a welder, sandblaster and painter. Dr. Kraman noted that although Claimant did not work directly with asbestos he was frequently around those who were removing asbestos. Claimant was not required to wear a mask and rarely wore respiratory protection. Claimant is not currently working but receives disability due to his breathing condition. Dr. Kraman noted that Claimant stated his breathing problems started sometime in the 1980s and that his dyspnea and wheezing have increased over time. However, Claimant was not

treated for the condition until 1998 after a pulmonary function test. Then in 1999 Claimant was placed on oxygen twenty-four hours a day. Dr. Kraman found that Claimant has a smoking history of fifty pack-years quitting in 2003. Dr. Kraman performed a physical examination, pulmonary function test and CT scan. (EX 1B).

Upon pulmonary examination, Dr. Kraman noted bilateral healed scars and decreased vesicular sounds. (EX 1B). He found no wheezes, rhonchi or rubs but heard fine crackles at both posterior bases and the left anterior base. Based on the pulmonary function testing Dr. Kraman diagnosed Claimant with severe airway obstruction. He also noted air trapping and a decreased diffusion capacity. Dr. Kraman found that the CT scan revealed emphysema with no fibrosis or calcified pleural plaques. He found no evidence of asbestosis or silicosis. Dr. Kraman attributed the airway trapping to the Claimant's lung surgery in the 1970s. He found Claimant totally disabled due to emphysema caused by smoking. (EX 1B).

Dr. Kraman testified by deposition on March 3, 2006. (EX 1). He reiterated his findings in the above summarized report. Dr. Kraman continues to opine that Claimant's condition is related solely to a fifty pack year smoking history and not his work at Jeffboat. Dr. Kraman stated that Claimant first started experiencing breathing problems in the late 1980s. Dr. Kraman agreed that there is an advantage to actually examining a patient himself. He testified that after hearing crackles in Claimant's lungs he expected to find fibrotic disease because the sounds are typical with asbestosis; however, he was "surprised" that the CT scan revealed no evidence of fibrosis or any other work related condition. The CT scan was conducted on Claimant's front and back side to fully determine whether fibrosis was present. Next, the pulmonary function testing revealed airway obstruction and air trapping. Dr. Kraman stated that these conditions can be caused by fibrotic lung disease or emphysema. After examining the pulmonary function testing and the CT scan Dr. Kraman determined that Claimant suffers from emphysema and not fibrosis. He found evidence of bullas which also illustrate emphysema in Claimant's lungs. Dr. Kraman did not review any of Claimant's past medical records. (EX 1).

Ultimately, Dr. Kraman diagnosed Claimant with pulmonary emphysema unrelated to his work at Jeffboat. (EX 1). He opined that Claimant does not suffer from any asbestos related condition. He found no evidence of pleural plaques, which he stated would have shown Claimant was exposed to asbestos. Calcified pleural plaques are the thickening of the walls of the lungs which result from exposure to asbestos. He stated that "there was no evidence to suggest asbestosis at all. Everything points to emphysema, nothing points to any occupational lung disease that I'm aware of." (EX 1, p. 27). He noted that Claimant underwent lung surgery to remove bulla in the 1970s, which lead him to believe that Claimant developed emphysema early on. (EX 1).

Dr. Kraman disagreed with the opinion of Dr. DeGraff and stated that he "doesn't present any evidence to support his opinion." (EX 1, p. 28). Dr. Kraman testified that Dr. DeGraff had sufficient information to come to a conclusion on Claimant's condition but believed the evidence does not support his ultimate opinion that Claimant's respiratory condition is related to work at Jeffboat. However, Dr. Kraman agreed with Dr. DeGraff that Claimant suffers from a Class IV impairment. He opined that Claimant is ninety percent impaired and that the impairment existed prior to 1998. Dr. Kraman found no evidence that the impairment was related to Claimant's

employment at Jeffboat. He based his disability opinion on Claimant's inability to function without oxygen. Dr. Kraman stated that "clearly he is severely impaired in either event, and this is proven by the fact that he needs oxygen 24 – regardless of what this test shows, if he needs oxygen simply to walk across the room, he's severely impaired." (EX 1, p. 61-2).

Next, Dr. Kraman discussed how the inhalation of asbestos fibers, dust and debris causes the formation of inflammatory cells which release enzymes that attack the lungs and act as toxins. (EX 1). As a result, scarring occurs which leads to diffuse pulmonary fibrosis. The entire lungs become damaged instead of merely "localized" damage. A person's diffusion capacity then becomes reduced. The inflammation can lead to obstructive airway disease which can be detected on pulmonary function testing. The inhalation of welding and silica fumes can also cause inflammation of a person's airways and pulmonary fibrosis. The pulmonary fibrosis can lead to retraction of a person's lung tissue which leads to spaces in the tissue known as pericatricial emphysema.

On cross examination Dr. Kraman agreed that he has not "had much experience in treating or examining shipyard workers." (EX 1, p. 35). He is unfamiliar with the working conditions of employees at Jeffboat. Dr. Kraman is also unfamiliar with the particular welding fumes, sandblasting dust and grinding fumes that employees are exposed to at Jeffboat shipyard. Dr. Kraman agreed that welding fumes and silica cause "toxic damage" to a person's body and that "sandblasting is an extremely hazardous occupation." (EX 1, p. 37). However, Dr. Kraman noted that even if he had received a more developed work history from Claimant, his opinion would remain the same because he found no evidence of pulmonary fibrosis. He testified his lack of knowledge about Jeffboat's actual facilities does not affect the strength of his opinion or his ability to diagnose pulmonary fibrosis. (EX 1).

Furthermore, although Dr. Kraman never reviewed any of Claimant's medical records, he continues to disagree with the other physicians who have found that Claimant suffers from pulmonary fibrosis. He stated that "fibrosis doesn't come and go; it comes and either stays stable or gets worse." (EX 1, p. 52). Also Dr. Kraman indicated that chest films should only be used to find whether a possibility of pulmonary fibrosis exists. If the films reveal shadowing there is a possibility of pulmonary fibrosis. As a result, a CT scan is needed to determine whether pulmonary fibrosis actually exists because an x-ray film can suggest pulmonary fibrosis even when its not there. In this case Dr. Kraman opined that based on the CT scan there is no pulmonary fibrosis. He agrees that Claimant suffers from an airway obstruction but he attributes the condition to emphysema related to cigarette smoking based on the CT scan and pulmonary function testing. He testified that the pulmonary function testing suggests a condition related to either emphysema or pulmonary fibrosis, but after examining the CT scan he was able to rule out pulmonary fibrosis. Dr. Kraman found no evidence of scarring on the CT scan which is necessary to diagnose an asbestos or silica related condition. Accordingly, Dr. Kraman opined that Claimant is totally disabled due to emphysema related to smoking. (EX 1).

Coverage by the Act

For his claim to be covered by the Act, Claimant must establish that the injury for which he seeks benefits occurred upon the navigable waters of the United States, including any dry

dock, or on a landward area covered by Section 3(a) of the Act. He must also establish that his work was maritime in nature and not specifically excluded by the Act. These are known as the “situs” and the “status” requirements of the Act. 33 U.S.C. §§ 902(3), 903(a); *Director, OWCP v. Perini North River Associates*, 459 U.S. 297 (1983); *P.C. Pfeiffer Co., Inc. v. Ford*, 444 U.S. 69 (1979); *Northwest Marine Terminal Co., Inc. v. Caputo*, 432 U.S. 249 (1977). The situs test limits the geographic coverage of the Act, while the status test is an occupational concept that focuses on the nature of the worker’s activities. *P.C. Pfeiffer Co., Inc.*, 444 U.S. at 78; *Bienvenu v. Texaco, Inc.*, 164 F.3d 901 (5th Cir. 1999) (en banc). The Parties have stipulated that the claim is covered by the Act and the record supports the stipulation. (JX 1).

Injury Arising Out of Employment and Causation

Section 20(a) of the LHWCA, 33 U.S.C. § 920(a), provides a presumption that a claim comes within the provisions of the Act “in the absence of substantial evidence to the contrary.” To establish a prima facie claim for compensation, a claimant has the burden of establishing that: (1) the claimant sustained physical harm or pain; and (2) an accident occurred in the course of employment, or conditions existed at work, which could have caused, aggravated, or accelerated the harm or pain. *Port Cooper/T. Smith Stevedoring Co., Inc. v. Hunter*, 227 F.3d 285, 287 (5th Cir. 2000); *Kier v. Bethlehem Steel Corp.*, 16 BRBS 128, 129 (1984). Once this prima facie case is established, a presumption is created under Section 20(a) that the employee’s injury or death arose out of employment. 33 U.S.C. § 920(a); *Hunter*, 227 F.3d at 287.

In order to show harm or injury a claimant must show that something has gone wrong with the human frame. *Crawford v. Director, OWCP*, 932 F.2d 152 (2nd Cir. 1991). An injury cannot be found absent some work-related accident, exposure, event or episode, and while a claimant’s injury need not be caused by an external force, something still must go wrong within the human frame. *Schoener v. Sun Shipbuilding and Dry Dock Co.*, 8 BRBS 630, 632 (1978). Under the aggravation rule, an entire disability is compensable if a work-related injury aggravates, accelerates, or combines with a prior condition. *Gooden v. Director, OWCP*, 135 F.3d 1066, 1069 (5th Cir. 1998) (pre-existing heart disease); *Kubin v. Pro-Football, Inc.*, 29 BRBS 117, 119 (1995) (pre-existing back injuries).

As summarized above, Claimant testified that during the course of his employment with Jeffboat, he was exposed to and inhaled asbestos particles, silica and other fumes and irritants on a daily basis as a laborer, painter, sandblaster, machine operator and welder. Claimant often worked in confined areas that were poorly ventilated and he was not provided with respiratory equipment. Asbestos, silica, harmful fumes and dust were used in and produced by the tools he was provided. These harmful irritants were a part of his daily life at Jeffboat. Claimant testified to his daily exposure to each of these irritants during his thirty four years of employment with Jeffboat. He was not exposed to asbestos or other fumes or dust when working for any other employer. Jeffboat has introduced no evidence showing that Claimant was not exposed to these harmful conditions during his employment with Jeffboat. I find Claimant’s testimony to be credible, and I afford great weight to it. I find that Claimant was exposed to and inhaled asbestos particles, silica and other harmful fumes, dust and irritants while employed with Jeffboat. Therefore, Claimant has satisfied prong two of his prima facie case.

Claimant also submitted chest x-ray readings, pulmonary function tests, a CT scan and the medical opinion of Dr. DeGraff as evidence. First, Paul Tittle, M.D., interpreted the September 23, 1998 chest x-ray film and found evidence of scattered parenchymal fibrosis. (CX 6). He then found emphysematous bullae, diffuse pulmonary interstitial fibrosis and chronic obstructive pulmonary disease based on the September 25, 1998 CT scan. (CX 7). Susan Daum, M.D. a B-reader interpreted the March 6, 2001 chest x-ray as 1/1 and noted fibrotic pleural streaks. (CX 3). Dr. Tittle interpreted the March 6, 2001 chest x-ray and again found basilar fibrosis but no acute pulmonary disease. (CX 8). Karen Berg, M.D. interpreted the May 29, 2003 chest x-ray and found mild atherosclerotic disease and possible chronic obstructive pulmonary disease. (CX 9). All the pulmonary function testing revealed that Claimant suffers from a severe obstructive defect and air trapping. (CX 5; EX 1B, 1C). Lastly, Dr. DeGraff opined that Claimant suffers from a severe obstructive defect and respiratory condition as a result of his exposure to asbestos, fumes, dust and other irritants as the result of his employment with Jeffboat. (CX 1, 12). A summary of Dr. DeGraff's opinions was provided above.

Dr. DeGraff is Board-certified in Internal Medicine and Pulmonary Diseases. (CX 2). He testified that he has treated numerous patients suffering from diseases related to their exposure to asbestos, silica, fumes, dust and other irritants who have worked at shipyards. (CX 1, 12). Although Dr. DeGraff did not examine Claimant himself, he reviewed the other medical evidence of record and the actual x-ray films. Dr. DeGraff opined that Claimant is totally disabled due to a severe obstructive ventilatory defect related to pulmonary fibrosis. (CX 1, 12). He based his opinion on the CT scan, chest x-rays and pulmonary function testing. He found evidence of pericatricial emphysema caused by lung retraction which is secondary to pulmonary fibrosis. Dr. DeGraff testified that Claimant's condition was not due to cigarette smoking based on the fact that Claimant's diaphragms were not flattened which is typical of smoking induced emphysema. (CX 12).

Jeffboat tries to discredit Dr. DeGraff by arguing that he did not examine Claimant and that he failed to take into account Claimant's full medical history. (Employer's Post-hearing brief). However, I find that these arguments do not make Dr. DeGraff's findings any less credible. Although Dr. DeGraff agreed that it is helpful and advantageous to examine a patient oneself, he testified that it's no more advantageous to examine a patient then it is to review his medical records in a case like this. He stated that even if he had examined Claimant, his opinions would remain the same because there are no other tests he would have conducted that he had not already reviewed.

I find that Dr. DeGraff's opinion is well-reasoned and well-documented. Furthermore, his opinion is enhanced by the pulmonary function testing and the chest x-ray interpretations of Drs. Tittle, Daum and Berg. I find that Claimant has made a prima facie showing, and therefore, he is entitled to the Section 20 presumption. Claimant's evidence shows that he has sustained an occupational respiratory disease and that during the course of his employment he was exposed to asbestos, silica, dust and other fumes which could have caused his condition.

"Once the presumption in Section 20(a) is invoked, the burden shifts to the employer to rebut it through facts--not mere speculation--that the harm was *not* work-related." *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 687-688 (5th Cir. 1999). The burden then shifts to the

employer, who can rebut the presumption by showing that either (1.) exposure to injurious stimuli did not cause the harm, i.e., the employee's occupational disease, or (2.) the employee was exposed to injurious stimuli or working conditions while performing work covered under the LHWCA for a subsequent employer. *New Orleans Stevedores v. Ibos*, 317 F.3d 480, 485 (5th Cir. 2003), citing *Avondale Industries, Inc., v. Director, OWCP*, 977 F.2d 186, 190 (5th Cir. 1992). If the employer presents specific and comprehensive evidence sufficient to sever the connection between the injury and the employment, the Section 20(a) presumption no longer controls, and the issue of causation must be resolved on the whole body of proof. *Hughes v. Bethlehem Steel Corp.*, 17 BRBS 153, 155; *Kier v. Bethlehem Steel Corp.*, 16 BRBS 128, 129 (1984).

Jeffboat provided the medical report and deposition of Dr. Kraman as evidence. (EX 1). Dr. Kraman's opinions are discussed in detail above. Dr. Kraman opined that Claimant's problems are related solely to emphysema caused by smoking and are not related to his work at Jeffboat. He agreed that Claimant suffers from an obstructive defect but found no pulmonary fibrosis on the CT scan. Jeffboat argues that great weight should be accorded to Dr. Kraman's opinion because he conducted a physical examination of Claimant. However, I see no reason to bolster Dr. Kraman's opinion solely because he examined Claimant, especially since he did not rely upon the actual examination in formulating his opinions. He appears to have based his opinions solely on the CT scan and pulmonary function testing. Also there are many problems with Dr. Kraman's opinion which diminishes his credibility. Initially, when forming his opinion he took into account an inadequate employment history. He was unfamiliar with the actual working conditions experienced by Claimant while working at Jeffboat. Dr. Kraman only looked for an asbestos related condition when examining Claimant and considering the diagnostic testing. He never took into consideration Claimant's exposure to harmful welding fumes, silica, dust and other irritants when formulating his opinion. The evidence clearly shows that while working in confined spaces Claimant was exposed to these irritants on a daily basis. (EX 1).

Furthermore, where a claimant suffers from a non-work related disease which could have caused his lung symptoms, as well work-related asbestosis, and was exposed to conditions at work which could also have caused the problem, it is employer's burden to establish that it was the non-work-related condition which caused the injury. *Fortier v. General Dynamics Corp.*, 15 BRBS 4 (1982). In *Fortier*, where the employer failed to produce specific and comprehensive evidence that the lung condition was not caused at least in part by asbestos exposure, the presumption was not rebutted. *Id.*; *LaPlante v. General Dynamics Corp./Elec. Boat Div.*, 15 BRBS 83 (1982). Although Drs. Kraman and DeGraff agreed that Claimant suffers from an airway obstruction, they disagreed on whether Claimant suffers from pulmonary fibrosis. Dr. Kraman determined that Claimant suffered from emphysema related to smoking and not asbestosis or any other work-related respiratory condition. However, since Kraman did not find pulmonary fibrosis on the CT scan he did not take into consideration or determine whether Claimant's exposure to other fumes, dust and irritants may have aggravated or even caused his respiratory condition. He merely interpreted the CT scan as showing no evidence of pulmonary fibrosis and ended the analysis. Dr. Kraman never discussed whether Claimant could have had both emphysema and a work related condition.

An administrative law judge is not bound to accept the opinion or theory of any particular medical examiner. The judge may rely upon his/her personal observation or judgment to resolve conflicts in the medical evidence. A judge is not bound to accept the opinion of a physician if rational inferences cause a contrary opinion. *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *Ennis v. O'Hearne*, 223 F.2d 755 (4th Cir. 1955). The trier of fact determines the credibility of the medical witnesses. Such determinations are to be respected on appeal. *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2nd Cir. 1961). The judge determines the credibility and weight to be attached to the testimony of a medical expert. *Pimpinella v. Universal Maritime Service, Inc.*, 27 BRBS 154 (1993). Accordingly, based on the reasons outline above, I find that the medical opinion of Dr. Kraman is less reliable than that of Dr. DeGraff, who had a better understanding of the events that lead to Claimant's medical condition.

Jeffboat fails to present evidence that Claimant was not exposed to asbestos, silicosis, or other dust and fumes or that Claimant did not inhale these irritants on a daily basis. Claimant testified extensively regarding this exposure. No other witnesses with personal knowledge except Claimant testified to the working conditions at Jeffboat. In *Martin v. Kaiser Co.*, 24 BRBS 112, 118-119 (1990), benefits were paid to an employee who testified credibly that he was exposed to asbestos as a shipfitter and whose testimony was not contradicted by the employer and the employee's lung cancer, resulting from such asbestos exposure, constitutes a work-related occupational disease. Therefore, since Jeffboat failed to present sufficient evidence to rebut the testimony of Claimant, the medical opinion of Dr. DeGraff and the other chest x-ray readings, I find that Jeffboat has not rebutted the Section 20 presumption. Accordingly, I find that Claimant has established his prima facie case that he was exposed to asbestos, fumes, dust and other irritants while employed with Jeffboat; and as a result, he suffers from a respiratory condition related to his employment that has resulted in his impairment.²

Nature and Extent of Claimant's Disability

Disability under the Act is defined as "incapacity because of injury to earn wages which the employee was receiving at the time of injury in the same or any other employment." 33 U.S.C. § 902(10). Disability is an economic concept based upon a medical foundation distinguished by either the nature (permanent or temporary) or the extent (total or partial). A permanent disability is one which has continued for a lengthy period and is of lasting or indefinite duration, as distinguished from one in which recovery merely awaits a normal healing period. *Watson v. Gulf Stevedore Corp.*, 400 F.2d 649, 654 (5th Cir. 1968); *Care v. Washington Metro Area Transit Authority*, 21 BRBS 248, 251 (1988). The traditional approach for determining whether an injury is permanent or temporary is to ascertain the date of maximum medical improvement (MMI). The determination of when MMI is reached, so that a claimant's disability may be said to be permanent, is primarily a question of fact based on medical evidence. *Seidel v. General Dynamics Corp.*, 22 BRBS 403, 407 (1989); *Stevens v. Lockheed Shipbuilding Co.*, 22 BRBS 155, 157 (1989); *Trask v. Lockheed Shipbuilding & Construction Co.*, 17 BRBS 56, 60 (1985). An employee is considered permanently disabled if he has any residual disability

² Even if the medical opinion of Dr. Kraman was sufficient to rebut the Section 20 presumption, if I weighed all the evidence together, I would continue to find that Claimant suffers from a work related respiratory condition which has caused his impairment based on a preponderance of the medical evidence. I would grant the findings of Drs. DeGraff and Tittle more weight than those of Dr. Kraman for the reasons discussed above.

after reaching MMI. *Louisiana Insurance Guaranty Assn. v. Abbott*, 40 F.3d 122, 125 (5th Cir. 1994); *Sinclair v. United Food & Commercial Workers*, 23 BRBS 148, 156 (1989). A condition is permanent if a claimant is no longer undergoing treatment with a view towards improving his condition, *Leech v. Service Engineering Co.*, 15 BRBS 18, 21 (1982), or if his condition has stabilized, *Lusby v. Washington Metropolitan Area Transit Authority*, 13 BRBS 446, 447 (1981).

A finding that a disability is permanent is also important for other reasons. A claimant's entitlement to benefits for a scheduled disability begins on the date of permanency. The date on which a claimant's condition has become permanent is primarily a medical determination. In this case both doctors agree and the parties stipulated that Claimant's date of maximum medical improvement was September 20, 1998, and that Claimant suffers from a permanent total impairment. (JX 1; CX 1, 12; EX 1; Tr. 14-15). Accordingly, I find that Claimant has a permanent total disability. Claimant's date of entitlement is September 20, 1998.

Compensation for Disability

33 U.S.C. § 908(a) provides the standard for computing Claimant's benefits. For permanent total disability Claimant shall receive compensation in the amount of sixty-six and two thirds of his average weekly wages. 33 U.S.C. § 908(a). The parties have stipulated that Claimant's average weekly wage is \$871.22, and that his compensation rate is \$580.82. (JX 1). Accordingly, Claimant is entitled to receive \$580.82 a week beginning on September 20, 1998.³

Medical Expenses

Section 7(a) of the Act provides that "the employer shall furnish such medical, surgical, and other attendance or treatment . . . for such period as the nature of the injury or the process of recovery may require." 33 U.S.C. § 907(a); 20 CFR §§ 702.401, 702.402. In general, the employer is responsible for those medical expenses reasonably and necessarily incurred as a result of a work-related injury. *Ingalls Shipbuilding, Inc. v. Director, OWCP*, 991 F.2d 163 (5th Cir. 1993); *Perez v. Sea-Land Services, Inc.*, 8 BRBS 130, 140 (1978). The Board has interpreted this provision broadly. *See, e.g., Dupre v. Cape Romaine Contractors, Inc.*, 23 BRBS 86, 94-95 (1989) (holding employer liable for modifications to claimant's house as medical expenses).

Pursuant to Section 7(b) of the Act, an employee has a right to choose an attending physician authorized by the Secretary to provide medical care. 33 U.S.C. § 907(b); 20 CFR § 702.403. When a claimant wishes to change treating physicians, the claimant must first request consent for a change and consent shall be given in cases where an employee's initial choice was not of a specialist whose services are necessary for and appropriate to the proper care and treatment of the compensable injury or disease. 33 U.S.C. § 907(c)(2); 20 CFR § 702.406(a); *see Armfield v. Shell Offshore, Inc.*, 25 BRBS 303, 309 (1992); *Senegal v. Strachan Shipping Co.*, 21 BRBS 8, 11 (1988). Otherwise, an employee may not change physicians after his initial choice unless the employer, carrier, or deputy commissioner has given prior consent. 33 U.S.C. § 907(c)(2); 20 CFR § 702.406(a).

³ \$871.22 * 66 2/3 = \$580.82

Section 7(d) of the Act sets forth the prerequisites for an employer's liability for payment or reimbursement of medical expenses incurred by a claimant by requiring a claimant to request his employer's authorization for medical services performed by any physician. 33 U.S.C. § 907(d); *Maguire v. Todd Shipyards Corp.*, 25 BRBS 299, 301 (1992); *Shahady v. Atlas Tile & Marble*, 13 BRBS 1007, 1010 (1981), *revd. on other grounds*, 682 F.2d 968 (D.C.Cir.1982). Specifically, Section 7(d) provides:

(1) An employee shall not be entitled to recover any amount expended by him for medical or other treatment or services unless—

(A) the employer shall have refused or neglected a request to furnish such services and the employee has complied with subsections (b) and (c) of this section and the applicable regulations; or

(B) the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide or authorize same.

33 U.S.C. § 907(d). When an employer refuses a claimant's request for authorization, the claimant is released from the obligation of continuing to seek approval for subsequent treatments, and thereafter need only establish that subsequent treatment was necessary for his injury in order to be entitled to such treatment at employer's expense. *Schoen v. U.S. Chamber of Commerce*, 30 BRBS 112, 113 (1996); *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20, 23 (1989); *See also* 20 CFR § 702.421; *Shahady v. Atlas Tile & Marble Co.*, 682 F.2d 968, 970 (D.C. Cir. 1982) (awarding reimbursement for medical expenses after being discharged by employer's physician); *McQuillen v. Horne Bros., Inc.*, 16 BRBS 10, 15-16 (1983) (allowing medical costs only if the claimant first notified the employer).

Section 7(b) of the Act authorizes the Secretary through his designees to oversee the provision of health care. 33 U.S.C. § 907(b); *see* 20 CFR § 702.407. Administrative Law Judges have authority to order payment for medical expenses already incurred, and generally to order future medical treatment for a work-related injury. They do not have the authority to specify a particular facility to provide future treatment. *McCurley v. Kiewest Co.*, 22 BRBS 115, 120 (1989). On the other hand, where a claimant sought authorization for a single medical procedure which the employer denied, the judge does have the authority to determine the reasonableness and necessity of the procedure and issue an order directing the employer to pay for it. *Caudill v. Sea Tac Alaska Shipbuilding*, 25 BRBS 92, 98 (1991).

Accordingly, Jeffboat must pay for the medical treatment already incurred by Claimant, as well as for future treatment of Claimant's work-related injury. Furthermore, interest shall be assessed on all overdue medical expenses. *See Ion v. Duluth, Missabe and Iron Range Railway Co.*, 31 BRBS 75, 79-80 (1997).

Interest

Claimant is entitled to interest on any accrued unpaid compensation benefits. *Canty v. S.E.L. Maduro*, 26 BRBS 147, 153 (1992); *Watkins v. Newport News Shipbuilding & Dry Dock Co.*, 8 BRBS 556, 559 (1978), *aff'd in part, rev'd in part sub nom. Newport News Shipbuilding*

& Dry Dock Company v. Director, OWCP, 594 F.2d 986 (4th Cir. 1979). The purpose of interest is not to penalize employers but, rather, to make claimants whole, as employer has had the use of the money until an award issues. *Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP*, 594 F.2d 986, 987 (4th Cir. 1979); *Renfroe v. Ingalls Shipbuilding, Inc.*, 30 BRBS 101, 104 (1996); *Smith v. Ingalls Shipbuilding Div., Litton Systems, Inc.*, 22 BRBS 47, 50 (1989). Interest is mandatory and cannot be waived in contested cases. *Byrum v. Newport News Shipbuilding & Dry Dock Co.*, 14 BRBS 833, 837 (1982).

ENTITLEMENT

In sum, Claimant established that he is totally and permanently disabled as a result of his work at Jeffboat. Accordingly, Claimant is entitled to permanent total disability starting on September 20, 1998, through the present and continuing.

Attorney's Fees

Having successfully established his right to compensation, Claimant's attorney is entitled to an award of fees under Section 28(a) of the Act. 33 U.S.C. § 928(a); 20 CFR § 702.134(a); *Director, OWCP v. Baca*, 927 F.2d 1122, 1124 (10th Cir. 1991). The regulations address attorney's fees at 20 CFR §§ 702.132 – 135. Claimant's attorney has not yet filed an application for attorney's fees. Claimant's attorney is hereby allowed thirty days (30) days to file an application for fees. A service sheet showing that service has been made upon all parties, including Claimant, must accompany the application. The parties have ten days following service of the application by the District Director within which to file any objections. The Act prohibits the charging of a fee in the absence of an approved application.

ORDER

Accordingly, the claim of R.K. for benefits is GRANTED. I therefore ORDER:

1. The Employer/Carrier shall pay permanent total disability compensation to Claimant beginning September 20, 1998, in the amount of \$580.82 a week, based on an average weekly wage of \$871.22, in accordance with Section 8(a) of the Act, 33 U.S.C. § 908(a).

4. Claimant is entitled to interest on accrued unpaid compensation benefits and medical expenses, other than Section 14(e) penalties. The applicable rate of interest shall be calculated in accordance with 28 U.S.C. §1961.

5. Employer/Carrier is responsible for reasonable, appropriate and necessary medical care as required by Section 7 of the Act.

6. The District Director shall make all calculations necessary to carry out this order.

7. Claimant's counsel shall have thirty (30) days to file a fully supported fee application with the Office of Administrative Law Judges, serving a copy on Claimant and opposing counsel, who shall have ten (10) days to file any objections.

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Rudolf L. Jansen
Administrative Law Judge